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9 Attorneys for Defendant
10 RAYMOND G. CHOY, LORRAINE J. CHOY and
11 TERESA MARIE NITTOLO doing business as
12 MOLTE COSE

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 NICOLE MOSS, an individual; and
17 DISABILITY RIGHTS ENFORCEMENT,
18 EDUCATION, SERVICES: HELPING
19 YOU HELP OTHERS, a California public
20 benefit corporation,

21 Plaintiffs,

22 v.

23 MOLTE COSE, RAYMOND G. CHOY
24 and LORRAINE J. CHOY, TERESA
25 MARIE NITTOLO, an individual dba
26 MOLTE COSE, and DOES 1-20, inclusive,

27 Defendants.

28 Case No. **C 07 4813**
**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. §§ 1331, 1441(b)
AND 1446 (FEDERAL QUESTION)**

Complaint Filed: June 27, 2007

29 TO THE CLERK IN THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS
30 NICOLE MOSS AND DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:
31 HELPING YOU HELP OTHERS:

32 PLEASE TAKE NOTICE THAT Defendants, Molte Cose, Raymod G. Choy,
33 Lorraine J. Choy and Teresa Marie Nittolo (hereinafter "Defendants"), hereby give Notice of
34 Removal of the above-entitled action from the San Francisco County Superior Court to the United

1 follows:

2 1. This action was commenced on June 27, 2007, by the Complaint filed in the
3 Superior Court for the County of San Francisco, entitled *Molte Cose; Raymond G. Choy and*
4 *Lorraine J. Choy; Teresa Marie Nittolo, an individual dba Molte Cose and Does 1-20, inclusive,*
5 Case No. CGC-07-464669 (hereinafter "the Complaint").

6 2. On August 20, 2007, Plaintiffs Nicole Moss and Disability Rights
7 Enforcement, Education, Services: Helping You Help Others (hereinafter "Plaintiffs") personally
8 served Defendant Teresa Marie Nittolo with a copy of the Summons and Complaint. On information
9 and belief on August 21, 2007, Plaintiffs left a copy of the Summons and Complaint with a
10 receptionist at Defendant Raymod G. Choy's office. On information and belief, on August 22, 2007,
11 Plaintiffs mailed a copy of the Summons and Complaint to Defendant Raymond G. Choy. On
12 information and belief on August 21, 2007, Plaintiffs left a copy of the Summons and Complaint
13 with a receptionist at Defendant Lorraine J. Choy's office. On information and belief, on August 22,
14 2007, Plaintiffs mailed a copy of the Summons and Complaint to Defendant Lorraine J. Choy. A
15 true and correct copy of the Summons and Complaint is attached hereto as Exhibit A.

16 3. On September 19, 2007, Defendant Teresa Marie Nittolo filed an Answer to
17 Plaintiffs' Complaint in the Superior Court for the County of San Francisco. A true and correct copy
18 of the Answer is attached hereto as Exhibit B.

19 4. Defendants Raymond G. Choy and Lorraine J. Choy have not yet filed an
20 Answer to Plaintiffs' Complaint.

21 5. No further proceedings have been heard at the Superior Court for the County
22 of San Francisco.

23 6. The instant Notice of Removal is timely filed as it is within thirty (30) days of
24 the service date upon Defendant Teresa Marie Nittolo of the initial pleading pursuant to 28 U.S.C. §
25 1446(b).

26 7. A copy of this Notice of Removal will be filed with the Clerk of the Superior
27 Court of the State of California for the San Francisco County and served upon all parties as required
28 by 28 U.S.C. § 1446(d).

JURISDICTION

8. This is a suit of a wholly civil nature brought in a California court. The action is now pending in San Francisco County, California. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391, 1446. This case may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(b) as a result of the existence of original jurisdiction based on federal question.

INTRADISTRICT ASSIGNMENT

9. All civil actions that arise in the county of San Francisco shall be assigned to the San Francisco Division or the Oakland Division. Northern District Civil Local Rule 3-2(c) and (d); 3-5(b). Further, assignment in the San Francisco Division is proper because a substantial part of the events or omissions giving rise to the claim occurred and a substantial part of property that is the subject of the action is situated in the County of San Francisco, California. Northern District Civil Local Rule 3-2(c) and (d).

FEDERAL QUESTION

10. Defendants are the owners and operators, lessors and/or lessees or agents, or agents of the owners lessors and/or lessees of the clothing store Molte Cose located at 2044 Polk Street, San Francisco, California, 94109.

11. Upon information and belief, Plaintiff Nicole Moss, a disabled person, attempted to patronize Molte Cose on February 14, 2007, but claims that she was unable to do so because the business was allegedly inaccessible because the subject facilities allegedly did not comply with the ADA Access Guidelines For Buildings and Facilities. As a result, Plaintiffs filed the Complaint. The Complaint alleges the following causes of action: denial of access by a public accommodation in violation of the Americans with Disabilities Act; denial of full and equal access in violation of the California Civil Code; denial of accessible sanitary facilities in violation of the California Health & Safety Code; and denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act.

12. Because Plaintiffs allege that Defendants denied them access to a public

12. Because Plaintiffs allege that Defendants denied them access to a public accommodation in violation of the Americans with Disabilities Act, a federal statute, this action is a civil action arising under the laws of the United States of which this Court has original jurisdiction over pursuant to 28 U.S.C. § 1331. Defendants may remove this action to this Court pursuant to 28 U.S.C. §§ 1441(b) and 1446 because of the existence of original jurisdiction based on federal question. With respect Plaintiff's California state law causes of action, these causes of action are removable pursuant to this Court's supplemental jurisdiction under 28 U.S.C. §1367 because they are so related to the federal causes of action that they form part of the same case or controversy. Thus, this action is removable in its entirety.

13. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, Defendants will file a Notice to Plaintiffs, Plaintiffs' Counsel and State Court (with its attachments) of Removal of Civil Action Pursuant to 28 U.S.C. §§ 1331, 1441(b) and 1446 (Federal Question) with the Clerk of the Superior Court for the County of San Francisco. A true and correct of said Notice without attachments is attached hereto as Exhibit C.

Wherefore, having provided notice as is required by law, the above-entitled action should be removed from the Superior Court for the County of San Francisco to this Court.

Dated: September 19, 2007

Tyler M. Paetkau
 TYLER M. PAETKAU
 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Defendant
 RAYMOND G. CHOY, LORRAINE J. CHOY
 and TERESA MARIE NITTOLO doing
 business as MOLTE COSE

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EXHIBIT A

CM-010

COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): THOMAS E. FRANKOVICH, SBN 074414 2806 Van Ness Avenue San Francisco, CA 94109 TELEPHONE NO.: 415-674-8600 FAX NO.: 415-674-9900		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court JUN 27 2007 GORDON PARK-LI, Clerk PARAMNATT Deputy Clerk
ATTORNEY FOR (Name): NICOLE MOSS and DREES: HYHO SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street, Rm. 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse		
CASE NAME: NICOLE MOSS, et. al, v. MOLTE COSE, et. al.		
BY: _____		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)
		CASE NUMBER: CGC-07-464669 JUDGE: DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental /Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post-judgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.
 Date: JUNE 20, 2007

THOMAS E. FRANKOVICH

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

30

COPY

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
2 THOMAS E. FRANKOVICH,
3 *A Professional Law Corporation*
4 2806 Van Ness Avenue
5 San Francisco, CA 94109
6 Telephone: 415/674-8600
7 Facsimile: 415/674-9900

8 Attorneys for Plaintiffs
9 NICOLE MOSS
10 and DISABILITY RIGHTS
11 ENFORCEMENT, EDUCATION,
12 SERVICES: HELPING YOU
13 HELP OTHERS

ENDORSED
FILED
San Francisco County Superior Court

JUN 27 2007

GORDON PARK-LI, Clerk

BY: PARAM NATT
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

NOV 30 2007 - 9⁰⁰AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR SAN FRANCISCO COUNTY

13 NICOLE MOSS, an individual; and
14 DISABILITY RIGHTS ENFORCEMENT,
15 EDUCATION, SERVICES: HELPING
16 YOU HELP OTHERS, a California public
17 benefit corporation,

18 Plaintiffs,

19 v.

20 MOLTE COSE; RAYMOND G. CHOY and
21 LORRAINE J. CHOY; TERESA MARIE
22 NITTOLO, an individual dba MOLTE
23 COSE; and DOES 1-20, inclusive,

24 Defendants.

CASE NO. C6C-07-464669
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access
by a Public Accommodation in Violation of the
Americans with Disabilities Act of 1990 (42
U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
and Equal Access in Violation of California
Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

1 Plaintiffs NICOLE MOSS, an individual; and DISABILITY RIGHTS, ENFORCEMENT,
 2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants
 4 RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual
 5 dba MOLTE COSE and DOES 1-20, inclusive, and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
 8 disabilities, of which class plaintiff NICOLE MOSS and the membership of DREES are
 9 members, for failure to remove architectural barriers structural in nature at defendants' MOLTE
 10 COSE, a place of public accommodation, thereby discriminatorily denying plaintiffs and the
 11 class of other similarly situated persons with physical disabilities access to, the full and equal
 12 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
 13 accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to the
 14 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
 15 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff NICOLE MOSS is a person with physical disabilities who, on or about
 17 February 14, 2007, was an invitee, guest, patron, customer at defendants' MOLTE COSE, in the
 18 City of San Francisco, California. At said time and place, defendants failed to provide proper
 19 legal access to the MOLTE COSE, which is a "public accommodation" and/or a "public facility"
 20 including, but not limited to *the entrance*. The denial of access was in violation of both federal
 21 and California legal requirements, and plaintiff NICOLE MOSS suffered violation of his civil
 22 rights to full and equal access, and was embarrassed and humiliated.

23 **JURISDICTION AND VENUE:**

24 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to California
 25 Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*,
 26 including §19959 and Title 24, California Building Standards Code. Further, a violation of the
 27 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, is a violation of Civil Code
 28 §51 & 54.

1 4. **Venue:** Venue is proper in this court and is founded on the facts that the real
 2 property which is the subject of this action is located at/near 2044 Polk Street, in the City and
 3 County of San Francisco, State of California, and that plaintiffs' causes of action arose in this
 4 county.

5 **PARTIES:**

6 5. Plaintiff NICOLE MOSS is a "physically handicapped person", a "physically
 7 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
 8 disabled", "physically handicapped" and "person with physical disabilities" are used
 9 interchangeably, as these words have similar or identical common usage and legal meaning, but
 10 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 11 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
 12 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
 13 NICOLE MOSS is a "person with physical disabilities", as defined by all applicable California
 14 and United States laws. Plaintiff is a paraplegic. Plaintiff NICOLE MOSS requires the use of a
 15 wheelchair to travel about in public. Consequently, plaintiff NICOLE MOSS is a member of that
 16 portion of the public whose rights are protected by the provisions of Health & Safety Code
 17 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
 18 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
 19 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
 20 §12101, *et seq.*

21 6. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:
 22 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
 23 with persons with disabilities to empower them to be independent in American society. DREES
 24 accomplishes its goals and purposes through education on disability issues, enforcement of the
 25 rights of persons with disabilities, and the provision of services to persons with disabilities, the
 26 general public, public agencies and the private business sector. DREES brings this action on
 27 behalf of its members, many of whom are persons with physical disabilities and whom have
 28 standing in their right to bring this action.

7. That members of DREES, like plaintiff NICOLE MOSS, will or have been guests and invitees at the subject MOLTE COSE, and that the interests of plaintiff DREES in removing architectural barriers at the subject retail store advance the purposes of DREES to assure that all public accommodations, including the subject retail store, are accessible to independent use by mobility-impaired persons.

8. Defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20, inclusive, (hereinafter alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as MOLTE COSE, located at/near 2044 Polk Street, San Francisco, California, or of the building and/or buildings which constitute said public accommodation.

9. At all times relevant to this complaint, defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-20, inclusive, own and operate in joint venture the subject MOLTE COSE as a public accommodation. This business is open to the general public and conducts business therein. The business is a "public accommodation" or "public facility" subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

10. At all times relevant to this complaint, defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20, inclusive, are jointly and severally responsible to identify and remove architectural barriers at the subject retail store pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

PRELIMINARY FACTUAL ALLEGATIONS:

11. The MOLTE COSE, is a retail store, located at/near 2044 Polk Street, San Francisco, California. The MOLTE COSE, its entrance, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions", each of which has subjected the MOLTE COSE and each of its facilities, its entrance to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

12. At all times stated herein, plaintiff NICOLE MOSS was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendants, and each of them, advertised, publicized and held out the MOLTE COSE as being handicapped accessible and handicapped usable.

14. On or about February 14, 2007, plaintiff NICOLE MOSS attempted to enter MOLTE COSE through the primary door off Polk. Plaintiff NICOLE MOSS was unable to wheel into said store because it requires a person to step up over a high threshold.

15. Therefore, at said time and place, plaintiff NICOLE MOSS, a person with a disability, encountered the following inaccessible elements of the subject MOLTE COSE which constituted architectural barriers and a denial of the proper and legally-required access to a public accommodation to persons with physical disabilities including, but not limited to:

- a. lack of an accessible entrance due too a high concrete threshold;
- b. On personal knowledge, information and belief, other public facilities and elements too numerous to list were improperly inaccessible for use by persons with physical disabilities.

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1 16. At all times stated herein, the existence of architectural barriers at defendants'
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4 17. On or about March 26, 2007, defendant(s) were sent letters by or on behalf of
5 plaintiff NICOLE MOSS advising of the existence of architectural barriers, requesting a response
6 within 14 days and requesting remedial measures be undertaken within 90 days or an explanation
7 of why the time limit set could not be met and/or extenuating circumstances. Defendant's
8 attorney responded by letter of April 3, 2007, but did not address any of the issues or time table
9 set out by plaintiff NICOLE MOSS. Said letters are attached hereto collectively as exhibit "A"
10 and incorporated by reference as though fully set forth herein.

11 18. At all times stated herein, defendants, and each of them, were "negligent per se"
12 in not removing architectural barriers determined by the Department of Justice to be considered a
13 safety concern/safety hazard where it was readily achievable for said public accommodation to
14 remove barriers. The barriers and those requirements for barrier removal are found in 28 CFR 36,
15 and the building code to be followed is in appendix "A", referred to as "ADAAG". Therefore as
16 a legal result of defendants breach of duty to remove those barriers encountered by plaintiff,
17 plaintiff suffered bodily injury.

18 19. As a legal result of defendants RAYMOND G. CHOY and LORRAINE J.
19 CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20,
20 inclusive's failure to act as a reasonable and prudent public accommodation in identifying,
21 removing or creating architectural barriers, policies, practices and procedures that denied access
22 to plaintiffs and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

23 20. As a further legal result of the actions and failure to act of defendants, and as a
24 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
25 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.
26 Plaintiff NICOLE MOSS suffered a loss of his civil rights and his rights as a person with
27 physical disabilities to full and equal access to public facilities. Plaintiff NICOLE MOSS further
28 suffered emotional distress, mental distress, mental suffering, mental anguish, which includes,

1 but is not limited to, shame, humiliation, embarrassment, anger, disappointment and worry,
2 expectedly and naturally associated with a person with physical disabilities being denied access,
3 all to his damages as prayed hereinafter in an amount within the jurisdiction of this court. No
4 claim is being made for mental and emotional distress over and above that usually associated
5 with the discrimination and physical injuries claimed, and no expert testimony regarding this
6 usual mental and emotional distress will be presented at trial in support of the claim for damages.

7 21. Defendants', and each of their, failure to remove the architectural barriers
8 complained of herein created, at the time of plaintiff NICOLE MOSS's first visit to said public
9 accommodation, and continues to create continuous and repeated exposure to substantially the
10 same general harmful conditions which caused plaintiff NICOLE MOSS harm as stated herein.

11 22. Plaintiff NICOLE MOSS and the membership of DREES were denied their rights
12 to equal access to a public facility by defendants RAYMOND G. CHOY and LORRAINE J.
13 CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20,
14 inclusive, because defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA
15 MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20, inclusive, i.e.,
16 maintained a retail clothing store without access for persons with physical disabilities to its
17 facilities, including but not limited to the entrance, and other public areas as stated herein, and
18 continue to the date of filing this complaint to deny equal access to plaintiff and other persons
19 with physical disabilities in these and other ways.

20 23. On information and belief, construction alterations carried out by defendants have
21 also triggered access requirements under both California law and the Americans with Disabilities
22 Act of 1990.

23 24. Plaintiffs, as described hereinbelow, seek injunctive relief to require the MOLTE
24 COSE to be made accessible to meet the requirements of both California law and the Americans
25 with Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate the
26 MOLTE COSE as a public facility. Plaintiffs seek damages for violation of their civil rights on
27 February 14, 2007, and they seek statutory damages of not less than \$4,000, pursuant to Civil
28 Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for each day after her visit that

1 plaintiff NICOLE MOSS was deterred from returning to the retail store because of her
2 knowledge and belief that the premises was and remains inaccessible to persons with disabilities.

3 25. On information and belief, defendants have been negligent in their affirmative
4 duty to identify the architectural barriers complained of herein and negligent in the removal of
5 some or all of said barriers.

6 26. Because of defendants' violations, plaintiffs and other persons with physical
7 disabilities are unable to use public facilities such as those owned and operated by defendants on
8 a "full and equal" basis unless such facility is in compliance with the provisions of the
9 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et*
10 *seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
11 compelling defendants to make the MOLTE COSE accessible to persons with disabilities.

12 27. On information and belief, defendants have intentionally undertaken to modify
13 and alter existing building(s), and have failed to make them comply with accessibility
14 requirements under the requirements of ADAAG and Title 24. The acts and omission of
15 defendants, and each of them, in failing to provide the required accessible public facilities at
16 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
17 despicable conduct carried out by defendants, and each of them, with a willful and conscious
18 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
19 trembling of damages as provided by Civil Code §§52(a) and 54.3, in order to profound example
20 of defendants, and each of them, to other operators of other clothing stores and other public
21 facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5
22 and 54.

23 28. Plaintiffs are informed and believe and therefore allege that defendants
24 RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual
25 dba MOLTE COSE, and DOES 1-20, inclusive, and each of them, caused the subject building(s)
26 which constitute the MOLTE COSE to be constructed, altered and maintained in such a manner
27 that persons with physical disabilities were denied full and equal access to, within and throughout
28 said building(s) of the retail store and were denied full and equal use of said public facilities.

1 Furthermore, on information and belief, defendants have continued to maintain and operate said
2 retail store and/or its building(s) in such conditions up to the present time, despite actual and
3 constructive notice to such defendants that the configuration of MOLTE COSE and/or its
4 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff
5 NICOLE MOSS, the membership of plaintiff DREES and the disability community which
6 DREES serves. Such construction, modification, ownership, operation, maintenance and
7 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and
8 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

9 29. On personal knowledge, information and belief, the basis of defendants' actual
10 and constructive notice that the physical configuration of the facilities including, but not limited
11 to, architectural barriers constituting the MOLTE COSE and/or building(s) was in violation of
12 the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is not limited
13 to, communications with invitees and guests, plaintiff herself, sponsors of conferences, owners of
14 other retail stores and businesses, notices they obtained from governmental agencies upon
15 modification, improvement, or substantial repair of the subject premises and other properties
16 owned by these defendants, newspaper articles and trade publications regarding the Americans
17 with Disabilities Act of 1990 and other access laws, public service announcements by former
18 U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information.
19 Defendants' failure, under state and federal law, to make the MOLTE COSE accessible is further
20 evidence of defendants' conscious disregard for the rights of plaintiff and other similarly situated
21 persons with disabilities. Despite being informed of such effect on plaintiff and other persons
22 with physical disabilities due to the lack of accessible facilities, defendants, and each of them,
23 knowingly and willfully refused to take any steps to rectify the situation and to provide full and
24 equal access for plaintiffs and other persons with physical disabilities to the retail clothing store.
25 Said defendants, and each of them, have continued such practices, in conscious disregard for the
26 rights of plaintiffs and other persons with physical disabilities, up to the date of filing of this
27 complaint, and continuing thereon. Defendants had further actual knowledge of the architectural
28 barriers referred to herein by virtue of the demand letter addressed to the defendants and served

1 concurrently with the summons and complaint. Said conduct, with knowledge of the effect it
 2 was and is having on plaintiffs and other persons with physical disabilities, constitutes despicable
 3 conduct in conscious disregard of the rights and safety of plaintiffs and of other similarly situated
 4 persons, justifying the imposition of treble damages per Civil Code §§52 and 54.3.

5 30. Plaintiff NICOLE MOSS and plaintiff DREES, on behalf of its membership and
 6 the disability community which it serves, consisting of persons with disabilities, would, could
 7 and will return to the subject public accommodation when it is made accessible to persons with
 8 disabilities.

9 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 10 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 11 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 12 (On behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT,
 13 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 14 benefit corporation and Against Defendants RAYMOND G. CHOY and LORRAINE J.
 15 CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-
 16 20, inclusive)
 17 (42 U.S.C. §12101, *et seq.*)

18 31. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 19 the allegations contained in paragraphs 1 through 30 of this complaint.

20 32. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 21 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 22 protect:

23 some 43 million Americans with one or more physical or mental
 24 disabilities; [that] historically society has tended to isolate and
 25 segregate individuals with disabilities; [that] such forms of
 26 discrimination against individuals with disabilities continue to be a
 27 serious and pervasive social problem; [that] the nation's proper
 28 goals regarding individuals with disabilities are to assure equality
 of opportunity, full participation, independent living and economic
 self-sufficiency for such individuals; [and that] the continuing
 existence of unfair and unnecessary discrimination and prejudice
 denies people with disabilities the opportunity to compete on an
 equal basis and to pursue those opportunities for which our free
 society is justifiably famous.

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33. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

34. As part of the Americans with Disabilities Act of 1990, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

...

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

42 U.S.C. §12181(7)(E)

35. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation".

36. The specific prohibitions against discrimination set forth in §302(b)(2)(a), 42 U.S.C. §12182(b)(2)(a) are:

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are

necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

37. The removal of the barriers complained of by plaintiffs as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of MOLTE COSE pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

38. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities

1 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
2 plaintiffs complain of herein were and are "readily achievable" by the defendants under the
3 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
4 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to
5 make the required services available through alternative methods which were readily achievable.

6 39. On information and belief, construction work on, and modifications of, the subject
7 building(s) of MOLTE COSE occurred after the compliance date for the Americans with
8 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III
9 of the ADA.

10 40. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
11 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
12 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
13 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
14 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
15 returning to or making use of the public facilities complained of herein so long as the premises
16 and defendants' policies bar full and equal use by persons with physical disabilities.

17 41. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with
18 a disability to engage in a futile gesture if such person has actual notice that a person or
19 organization covered by this title does not intend to comply with its provisions". Pursuant to this
20 section, plaintiff NICOLE MOSS has not returned to defendants' premises since on or about
21 February 14, 2007, but on information and belief, alleges that defendants have continued to
22 violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to
23 access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
24 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
25 facilities readily accessible to and usable by individuals with disabilities to the extent required by
26 this title".

27 42. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
28 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement

the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
 (On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-20, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

43. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 42 of this complaint.

44. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

45. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

46. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

47. Plaintiff NICOLE MOSS and the membership of plaintiff DREES are persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by §§54 and 54.1. Each specific architectural barrier which defendants knowingly and willfully fail and refuse to remove constitutes a separate act in violation of §§54 and 54.1. Plaintiffs have been and continue to be denied full and equal access to defendants' MOLTE COSE. As a legal result, plaintiffs are entitled to seek damages pursuant to California Civil Code §54.3(a) for each day on which they visited or have been deterred from visiting the clothing store because of their knowledge and belief that the clothing store is inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

48. On or about February 14, 2007, plaintiff NICOLE MOSS suffered violations of §§54 and 54.1 of the Civil Code in that plaintiff NICOLE MOSS was denied access to the store itself and other public facilities as stated herein at the MOLTE COSE and on the basis that plaintiff NICOLE MOSS was a person with physical disabilities.

49. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to rights under §§54, 54.1 and 54.3, Civil Code. Plaintiff NICOLE MOSS further suffered emotional distress, mental distress, mental suffering, mental anguish, which includes

1 shame, humiliation, embarrassment, frustration, anger, disappointment and worry, all of which
2 are expectedly and naturally associated with a denial of access to a person with physical
3 disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and omissions to
4 act constituted discrimination against plaintiff on the sole basis that plaintiffs are persons or an
5 entity that represents persons with physical disabilities and unable, because of the architectural
6 barriers created and maintained by the defendants in violation of the subject laws, to use the
7 public facilities hereinabove described on a full and equal basis as other persons.

8 50. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
9 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
10 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
11 about February 14, 2007, and on a continuing basis since then, including statutory damages, a
12 trebling of all of actual damages, general and special damages available pursuant to §54.3 of the
13 Civil Code according to proof.

14 51. As a result of defendants', and each of their, acts and omissions in this regard,
15 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
16 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
17 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
18 the provisions of §54.3 and §55 of the Civil Code, plaintiffs therefore will seek recovery in this
19 lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party.
20 Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to
21 plaintiffs, but also to compel the defendants to make their facilities accessible to all members of
22 the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing
23 party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 (On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20, inclusive)
 (Health & Safety Code §19955, *et seq.*)

52. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 51 of this complaint.

53. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

54. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the MOLTE COSE and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the clothing store and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said store and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

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1 55. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
4 Regulations and these regulations must be complied with as to any alterations and/or
5 modifications of MOLTE COSE and/or the building(s) occurring after that date. Construction
6 changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant
7 to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961.
8 On information and belief, at the time of the construction and modification of said building, all
9 buildings and facilities covered were required to conform to each of the standards and
10 specifications described in the American Standards Association Specifications and/or those
11 contained in Title 24 of the California Building Standards Code.

12 56. Clothing stores such as the MOLTE COSE are "public accommodations or
13 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

14 57. As a result of the actions and failure to act of defendants, and as a result of the
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
16 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of
17 plaintiffs' civil rights and plaintiffs' rights as persons with physical disabilities to full and equal
18 access to public facilities.

19 58. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
20 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
21 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
22 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
23 and to take such action both in plaintiffs' own interests and in order to enforce an important right
24 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
26 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Civil Code §§54.3 and 55.
27 Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

28 59. Plaintiffs seek injunctive relief for an order compelling defendants, and each of

1 them, to make the subject place of public accommodation readily accessible to and usable by
2 persons with disabilities.

3 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

4 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
5 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
6 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
7 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

8 (On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS, ENFORCEMENT,
9 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
10 benefit corporation, and Against Defendants RAYMOND G. CHOY and LORRAINE J.
11 CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE and DOES 1-20,
12 inclusive)
13 (Civil Code §51, 51.5)

14 60. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 59 of this complaint.

16 61. Defendants' actions and omissions and failure to act as a reasonable and prudent
17 public accommodation in identifying, removing and/or creating architectural barriers, policies,
18 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
19 Unruh Act provides:

20 This section shall be known, and may be cited, as the
21 Unruh Civil Rights Act.

22 All persons within the jurisdiction of this state are free and
23 equal, and no matter what their sex, race, color, religion, ancestry,
24 national origin, or **disability** are entitled to the full and equal
25 accommodations, advantages, facilities, privileges, or services in
26 all business establishments of every kind whatsoever.

27 This section shall not be construed to confer any right or
28 privilege on a person that is conditioned or limited by law or that is
applicable alike to persons of every sex, color, race, religion,
ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any
construction, alteration, repair, structural or otherwise, or
modification of any sort whatsoever, beyond that construction,
alteration, repair, or modification that is otherwise required by
other provisions of law, to any new or existing establishment,
facility, building, improvement, or any other structure . . . nor shall
anything in this section be construed to augment, restrict, or alter in
any way the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect
otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the
Americans with Disabilities Act of 1990 (Public Law 101-336)
shall also constitute a violation of this section.

1 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 2 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the
 3 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 4 failing to act to identify and remove barriers can be construed as a "negligent per se" act of
 5 defendants, and each of them.

6 62. The acts and omissions of defendants stated herein are discriminatory in nature
 7 and in violation of Civil Code §51.5:

8 No business establishment of any kind whatsoever shall
 9 discriminate against, boycott or blacklist, refuse to buy from, sell
 10 to, or trade with any person in this state because of the race, creed,
 11 religion, color, national origin, sex, or disability of the person or of
 the person's partners, members, stockholders, directors, officers,
 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

12 As used in this section, "person" includes any person, firm
 13 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

14 Nothing in this section shall be construed to require any
 15 construction, alteration, repair, structural or otherwise, or
 16 modification of any sort whatsoever, beyond that construction,
 17 alteration, repair or modification that is otherwise required by other
 18 provisions of law, to any new or existing establishment, facility,
 19 building, improvement, or any other structure . . . nor shall
 anything in this section be construed to augment, restrict or alter in
 any way the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect
 otherwise possesses pursuant to other laws.

20 63. Defendants' acts and omissions as specified have denied to plaintiffs full and
 21 equal accommodations, advantages, facilities, privileges and services in a business establishment,
 22 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
 23 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
 24 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
 25 Law 101-336) shall also constitute a violation of this section". Plaintiffs accordingly incorporate
 26 the entirety of their above cause of action for violation of the Americans with Disabilities Act at
 27 ¶¶31, *et seq.*, as if repled herein.

64. As a legal result of the violation of plaintiff NICOLE MOSS's civil rights as hereinabove described, plaintiff NICOLE MOSS has suffered general damages. Plaintiffs NICOLE MOSS and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

PRAYER:

Plaintiffs pray that this court award damages and provide relief as follows:

- I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**
 (On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-20, inclusive)
 (42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants RAYMOND G. CHOY and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-20, inclusive, to make the MOLTE COSE, located at 2044 Polk Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

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1 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
2 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
3 **AND 54.3, ET SEQ.**

4 (On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT,
5 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
6 benefit corporation, and Against Defendants RAYMOND G. CHOY and LORRAINE J.
7 CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-
8 20, inclusive)
9 (California Civil Code §§54, 54.1, 54.3, et seq.)

10 1. For injunctive relief, compelling defendants RAYMOND G. CHOY and
11 LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and
12 DOES 1-20, inclusive, to make the MOLTE COSE, located at 2044 Polk Street, San Francisco,
13 California, readily accessible to and usable by individuals with disabilities, per state law.

14 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
15 each occasion on which plaintiffs were deterred from returning to the subject public
16 accommodation.

17 3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil
18 Procedure §1021.5, if plaintiffs are deemed the prevailing party;

19 4. Treble damages pursuant to Civil Code §54.3;

20 5. For all costs of suit;

21 6. Prejudgment interest pursuant to Civil Code §3291;

22 7. Such other and further relief as the court may deem just and proper.

23 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
24 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
25 **AND 54.3, ET SEQ.**

26 (On Behalf of Plaintiff NICOLE MOSS, and Against Defendants RAYMOND G. CHOY
27 and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE
28 COSE, and DOES 1-20, inclusive)
(California Civil Code §§54, 54.1, 54.3, et seq.)

1. General and compensatory damages according to proof.

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IV. **PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.**

(On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT,
EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
benefit corporation, and Against Defendants RAYMOND G. CHOY and LORRAINE J.
CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and DOES 1-
20, inclusive)
(Health & Safety code §19955, et seq.)

1. For injunctive relief, compelling defendants RAYMOND G. CHOY and
LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, and
DOES 1-20, inclusive, to make the MOLTE COSE, located at 2044 Polk Street, San Francisco,
California, readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or Civil
Code §55, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

V. **PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs NICOLE MOSS and DISABILITY RIGHTS ENFORCEMENT,
EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
benefit corporation and Against Defendants RAYMOND G. CHOY and LORRAINE J.
CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE COSE, , and DOES 1-
20, inclusive)
(California Civil Code §§51, 51.5, et seq.)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident
and for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
prevailing party;

3. Treble damages pursuant to Civil Code §52(a);

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

1 VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
4 CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)
(On Behalf of Plaintiff NICOLE MOSS, and Against Defendants RAYMOND G. CHOY
and LORRAINE J. CHOY; TERESA MARIE NITTOLO, an individual dba MOLTE
COSE, , and DOES 1-20, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

5
6 1. General and compensatory damages to plaintiff NICOLE MOSS according to
7 proof.

8 Dated: 6/21/07, 2007

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

9
10
11 By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs NICOLE MOSS and DISABILITY
RIGHTS ENFORCEMENT, EDUCATION, SERVICES:
HELPING YOU HELP OTHERS, a California public
benefit corporation

12
13
14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

17 Dated: 6/21/07, 2007

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

18
19 By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs NICOLE MOSS and
DISABILITY RIGHTS, ENFORCEMENT, EDUCATION
SERVICES: HELPING YOU HELP OTHERS, a California
public benefit corporation

EXHIBIT A

Nicole Moss
1 St. Francis Place, #5207
San Francisco, CA 94107

March 26, 2007

Manager
Molte Cose
2044 Polk Street
San Francisco, CA 94109

Dear Manager of Molte Cose:

On Valentines Day I visited Molte Cose. As I use a wheelchair, I had problems with the step that goes into the store.

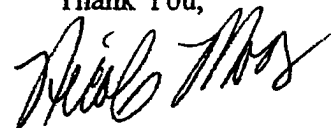
I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. However it would seem to me that the Owner of the building should be the most responsible seeing that Owner is just that, the owner. I'd like to come back to Molte Cose once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. <http://www.usdoj.gov/crt/ada/adahom1.htm>. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,



Nicole Moss

Nicole Moss
1 St. Francis Place, #5207
San Francisco, CA 94107

March 26, 2007

Owner of The Building
Molte Cose
2044 Polk Street
San Francisco, CA 94109

Dear Owner of the building,

On Valentines Day I visited Molte Cose. As I use a wheelchair, I had problems with the step that goes into the store.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. However it would seem to me that the Owner of the building should be the most responsible seeing that Owner is just that, the owner. I'd like to come back to Molte Cose once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. <http://www.usdoj.gov/crt/ada/adahom1.htm>. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,


Nicole Moss

Law Offices of
Michael L. Greenberg
595 Market Street, Ste. 1100
San Francisco, CA 94105

Telephone: 415-777-5750
Facsimile: 415-777-5752

April 3, 2007

VIA CERTIFIED MAIL

Nicole Moss
1 St. Francis Place, #5207
San Francisco, CA 94107

Re: Molte Cose

Dear Ms. Moss:

I represent Molte Cose and am in possession of your March 26, 2007 letter. Please address all further communication regarding the matters contained within your letter to my attention.

My client is evaluating your assertion that disability related accommodation must be made to the "step that goes into the store." Do not hesitate to call should you have questions regarding the foregoing.

Yours truly,



Michael L. Greenberg

cc: client

ORIGINAL

THOMAS E. FRANKOVICH (State Bar No. 074414)
 THOMAS E. FRANKOVICH,
A Professional Law Corporation
 2806 Van Ness Avenue
 San Francisco, CA 94109
 Telephone: 415/674-8600
 Facsimile: 415/674-9900

Attorneys for Plaintiffs
 NICOLE MOSS
 and DISABILITY RIGHTS
 ENFORCEMENT, EDUCATION,
 SERVICES: HELPING YOU
 HELP OTHERS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR SAN FRANCISCO COUNTY**

NICOLE MOSS, an individual; and
 DISABILITY RIGHTS ENFORCEMENT,
 EDUCATION, SERVICES: HELPING
 YOU HELP OTHERS, a California public
 benefit corporation,

Plaintiffs,

v.

MOLTE COSE; RAYMOND G. CHOY and
 LORRAINE J. CHOY; TERESA MARIE
 NITTOLO, an individual dba MOLTE
 COSE; and DOES 1-20, inclusive,

Defendants.

**CASE NO.
Civil Rights**

**COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MOLTE COSE; RAYMOND G. CHOY and LORRAINE J. CHOY;
TERESA MARIE NITTOLO, an individual dba MOLTE COSE; and
DOES 1-20, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NICOLE MOSS, an individual; and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP
OTHERS, a California public benefit corporation,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o al colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF SAN FRANCISCO
400 MC ALLISTER ST, RM 103
SAN FRANCISCO, CA 94102

CASE NUMBER:
(Número de caso) **0680-07-464669**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas E. Frankovich, 2806 Van Ness Ave, San Francisco, CA 94109
415-674-8600

P. NATT

DATE:

(Fecha) **JUN 27 2007**

Gordon Park Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☒ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

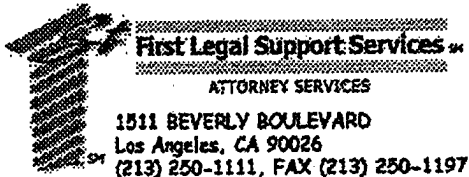
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

THOMAS F. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109 Telephone No: 415-674-8600 FAX No: 415-674-9900				For Court Use Only	
Attorney for: Plaintiff			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.
3. a. Party served: **TERESA MARIE NITTOLO**
4. Address where the party was served: **2044 POLK STREET
SAN FRANCISCO, CA 94109**
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Mon., Aug. 20, 2007 (2) at: 1:25PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 - a. as an individual defendant
7. Person Who Served Papers:
 - a. TONY LOWE
 - d. The Fee for Service was: Recoverable Cost Per CCP 1033.5(a)(4)(B)
 - e. I am: Not a Registered California Process Server



8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

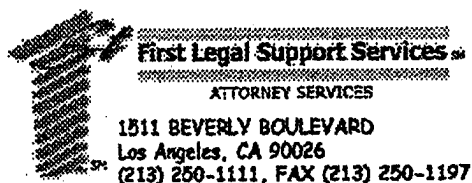
Date: Wed, Aug. 22, 2007

Tony Lowe
(TONY LOWE)

(A)

Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109 Telephone No: 415-674-8600 FAX No: 415-674-9900				For Court Use Only	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.
3. a. Party served: **RAYMOND G. CHOY**
4. Address where the party was served: **2048 POLK STREET, #5
SAN FRANCISCO, CA 94109**
5. I served the party:
 - b. by substituted service. On: Tue., Aug. 21, 2007 at: 3:15PM by leaving the copies with or in the presence of:
OVAYS TALEL, RECEPTIONIST
 - (1) (Business) a Person in charge at least 18 years of age apparently in charge of the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
 - (4) A declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 - a. as an individual defendant
7. Person Who Served Papers:
 - a. **TONY LOWE**
 - d. The Fee for Service was: Recoverable Cost Per CCP 1033.5(a)(4)(B)
 - e. I am: Not a Registered California Process Server



8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

Tony Lowe
 (TONY LOWE)

Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109			For Court Use Only	
Telephone No: 415-674-8600 FAX: No: 415-674-9900			Ref. No or File No.:	
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT				
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.				
AFFIDAVIT OF REASONABLE DILIGENCE			Hearing Date:	Time:
			Dept/Div:	Case Number: CGC-07-464669

1. I, TONY LOWE, and any employee or independent contractors retained by FIRST LEGAL SUPPORT SERVICES are and were on the dates mentioned herein over the age of eighteen years and not a party to this action. Personal service was attempted on Defendant RAYMOND G. CHOY as follows:

2. Documents: SUMMONS; COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.

Day	Date	Time	Location	Results
Thu	08/16/07	6:16pm	Business	PER THE RECEPTIONIST, THE SUBJECT IS NOT IN AT THIS TIME. Attempt made by: TONY LOWE. Attempt at: 2048 POLK STREET, #5 SAN FRANCISCO CA 94109.
Mon	08/20/07	1:25pm	Business	PER THE RECEPTIONIST, THE SUBJECT IS NOT IN AT THIS TIME. Attempt made by: TONY LOWE. Attempt at: 2048 POLK STREET, #5 SAN FRANCISCO CA 94109.
Tue	08/21/07	3:15pm	Business	Substituted Service on: RAYMOND G. CHOY Business - 2048 POLK STREET, #5 SAN FRANCISCO, CA. 94109 by leaving a copy of the document(s) with: OVAYS TALEL, RECEPTIONIST. Served by: TONY LOWE
Wed	08/22/07			Mailed copy of Documents to: RAYMOND G. CHOY

3. Person Executing

- a. TONY LOWE
 b. FIRST LEGAL SUPPORT SERVICES
 1511 BEVERLY BOULEVARD
 LOS ANGELES, CA 90026
 c. (213) 250-1111, FAX (213) 250-1197

Recoverable Costs Per CCP 1033.5(a)(4)(B)

d. The Fee for service was:

e. I am: (3) Not a Registered California Process Server

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

AFFIDAVIT OF REASONABLE DILIGENCE

(TONY LOWE)

† Page: 1

6368273.frag-sf.82521

②

Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109 Telephone No: 415-674-8600 FAX No: 415-674-9900				For Court Use Only	
Ref. No or File No.:					
Attorney for: Plaintiff Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
PROOF OF SERVICE By Mail		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

- I am over the age of 18 and not a party to this action. I am employed in the county where the mailing occurred.
- I served copies of the SUMMONS; COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.
- By placing a true copy of each document in the United States mail, in a sealed envelope by **First Class** mail with postage prepaid as follows:

a. Date of Mailing:	Wed., Aug. 22, 2007
b. Place of Mailing:	SAN FRANCISCO, CA 94103
c. Addressed as follows:	RAYMOND G. CHOY 2048 POLK STREET, #5 SAN FRANCISCO, CA 94109
- I am readily familiar with the business practice for collection and processing of correspondence as deposited with the U.S. Postal Service on Wed., Aug. 22, 2007 in the ordinary course of business.
- | | |
|---|--|
| Person Serving:
a. AARON DANIEL
b. FIRST LEGAL SUPPORT SERVICES
1138 HOWARD STREET
SAN FRANCISCO, CA 94103
c. 415-626-3111 | Recoverable Cost Per CCP 1033.5(a)(4)(B)
d. The Fee for Service was:
e. I am: Not a Registered California Process Server |
|---|--|

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

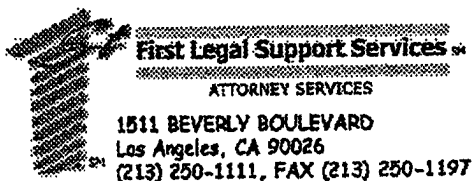
Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109 Telephone No: 415-674-8600 FAX No: 415-674-9900				For Court Use Only	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.
3. a. Party served: **LORRAINE J. CHOY**
4. Address where the party was served: **2048 POLK STREET, #5
SAN FRANCISCO, CA 94109**
5. I served the party:
 - b. by substituted service. On: Tue., Aug. 21, 2007 at: 3:15PM by leaving the copies with or in the presence of:
OVAYS TALEL, RECEPTIONIST
 - (1) (Business) a Person in charge at least 18 years of age apparently in charge of the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
 - (4) A declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 - a. as an individual defendant
7. Person Who Served Papers:
 - a. TONY LOWE

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

e. I am: Not a Registered California Process Server



8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

Judicial Council Form POS-010
 Rule 982.9(a)&(b) Rev January 1, 2007

**PROOF OF SERVICE
SUMMONS**

Tony Lowe
 (TONY LOWE)

6368274.thofr-fg.82527

(17)

Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109				For Court Use Only	
Telephone No: 415-674-8600 FAX: No: 415-674-9900		Ref. No or File No.:			
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
AFFIDAVIT OF REASONABLE DILIGENCE		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

1. I, TONY LOWE, and any employee or independent contractors retained by FIRST LEGAL SUPPORT SERVICES are and were on the dates mentioned herein over the age of eighteen years and not a party to this action. Personal service was attempted on Defendant LORRAINE J. CHOY as follows:

2. Documents: SUMMONS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.

Day	Date	Time	Location	Results
Thu	08/16/07	6:16pm	Business	PER THE RECEPTIONIST, THE SUBJECT IS NOT IN AT THIS TIME. Attempt made by: TONY LOWE. Attempt at: 2048 POLK STREET, #5 SAN FRANCISCO CA 94109.
Mon	08/20/07	1:25pm	Business	PER THE RECEPTIONIST, THE SUBJECT IS NOT IN AT THIS TIME. Attempt made by: TONY LOWE. Attempt at: 2048 POLK STREET, #5 SAN FRANCISCO CA 94109.
Tue	08/21/07	3:15pm	Business	Substituted Service on: LORRAINE J. CHOY Business - 2048 POLK STREET, #5 SAN FRANCISCO, CA. 94109 by leaving a copy of the document(s) with: OVAYS TALEL, RECEPTIONIST. Served by: TONY LOWE
Wed	08/22/07			Mailed copy of Documents to: LORRAINE J. CHOY

3. Person Executing
 a. TONY LOWE
 b. FIRST LEGAL SUPPORT SERVICES
 1511 BEVERLY BOULEVARD
 LOS ANGELES, CA 90026
 c. (213) 250-1111, FAX (213) 250-1197

Recoverable Costs Per CCP 1033.5(a)(4)(B)

d. The Fee for service was:

e. I am: (3) Not a Registered California Process Server

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

AFFIDAVIT OF REASONABLE DILIGENCE

(TONY LOWE)

6368274.fragr-sf.82527

Attorney or Party without Attorney: THOMAS E. FRANKOVICH, Bar #74414 THE FRANKOVICH GROUP 2806 VAN NESS AVE. SAN FRANCISCO, CA 94109 Telephone No: 415-674-8600 FAX No: 415-674-9900				For Court Use Only	
Ref. No or File No.:					
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: NICOLE MOSS, et al. Defendant: MOLTE COSE, et al.					
PROOF OF SERVICE By Mail		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-07-464669

- I am over the age of 18 and not a party to this action. I am employed in the county where the mailing occurred.
- I served copies of the SUMMONS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; CIVIL CASE COVER SHEET; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT (BLANK); JUDICIAL MEDIATION PROGRAM.
- By placing a true copy of each document in the United States mail, in a sealed envelope by First Class mail with postage prepaid as follows:
 - Date of Mailing: Wed., Aug. 22, 2007
 - Place of Mailing: SAN FRANCISCO, CA 94103
 - Addressed as follows: LORRAINE J. CHOY
2048 POLK STREET, #5
SAN FRANCISCO, CA 94109
- I am readily familiar with the business practice for collection and processing of correspondence as deposited with the U.S. Postal Service on Wed., Aug. 22, 2007 in the ordinary course of business.
- Person Serving:
 - AARON DANIEL
 - FIRST LEGAL SUPPORT SERVICES
1138 HOWARD STREET
SAN FRANCISCO, CA 94103
 - 415-626-3111

Recoverable Cost Per CCP 1033.5(a)(4)(B)

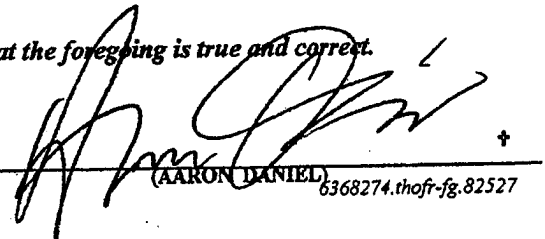
- The Fee for Service was:
- I am: Not a Registered California Process Server

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Aug. 22, 2007

Judicial Council Form POS-010
Rule 982.9.(a)&(b) Rev January 1, 2007

PROOF OF SERVICE
By Mail


 (AARON DANIEL)
 6368274.thofr-fg.82527

(T)

CERTIFICATE OR PROOF OF SERVICE BY MAIL

State of California)
County of San Francisco) ss

I, the undersigned, say: I am and was at all times herein mentioned, a resident of the County of San Francisco, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 2806 Van Ness Avenue, San Francisco, CA 94109-5460; that on the below date, following normal business practice, I served the foregoing document, described as:

PROOF OF SERVICE SUMMONS AND COMPLAINT

on the interested parties in this action, conveyed as follows:

☒ By depositing true copies thereof, enclosed in a sealed envelope, with postage thereon fully prepaid:

☒ in first class U.S. Mail

☐ in _____ priority or _____ standard overnight mail via Federal Express.

I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at San Francisco.

addressed to:

Lorraine J. Choy
Raymond G. Choy
2048 Polk Street, #5
San Francisco, CA 94109

Michael L. Greenberg, Esq.
595 Market Street, Ste. 1100
San Francisco, CA 94105

Teresa Marie Nittolo
2044 Polk Street
San Francisco, Ca 94109

I declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that the foregoing is true and correct. Executed August 28, 2007, at San Francisco, California.



Armetrice R. Cooper
(Original signed)

EXHIBIT B

1 TYLER M. PAETKAU, Bar No. 146305
2 LITTLER MENDELSON
3 A Professional Corporation
4 650 California Street
5 20th Floor
6 San Francisco, CA 94108.2693
7 Telephone: 415.433.1940

8 Attorneys for Defendant
9 TERESA MARIE NITTOLO doing business as
10 MOLTE COSE

ENDORSED
FILED
San Francisco County Superior Court

SEP 19 2007

GORDON PARRISH, Clerk
BY: ELIAS BUIT Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 NICOLE MOSS, an individual; and
14 DISABILITY RIGHTS ENFORCEMENT,
15 EDUCATION, SERVICES: HELPING
16 YOU HELP OTHERS, a California public
17 benefit corporation,

18 Plaintiffs,

19 v.

20 MOLTE COSE,
21 RAYMOND G. CHOY and
22 LORRAINE J. CHOY,
23 TERESA MARIE NITTOLO, an
24 individual dba MOLTE COSE, and
25 DOES 1-20, inclusive,

26 Defendants.

Case No. CGC-07-464669

**DEFENDANT TERESA MARIE
NITTOLO'S ANSWER TO PLAINTIFFS'
UNVERIFIED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

Dept: 212
Judge: Hon. Arlene T. Borick
Complaint Filed: June 27, 2007
Trial Date: None

FILED

27 Defendant TERESA MARIE NITTOLO doing business as MOLTE COSE
28 (hereinafter "Defendant") answers Plaintiffs' NICOLE MOSS and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS (hereinafter
"Plaintiffs") unverified Complaint alleging denial of access by a public accommodation in violation
of the Americans with Disabilities Act, denial of full and equal access in violation of the California
Civil Code, denial of accessible sanitary facilities in violation of the California Health & Safety
Code and denial of access to full and equal accommodations, advantages, facilities, privileges and/or

1 services in violation of the California Unruh Civil Rights Act on file in the above-entitled action as
2 follows:

3 **GENERAL DENIAL**

4 Pursuant to Code of Civil Procedure Section 431.30(d), Defendant hereby answers
5 the Complaint filed by Plaintiffs by generally denying each and every allegation contained therein,
6 by denying that Plaintiffs have been damaged or have sustained any damages as a result of the
7 conduct alleged therein, and by asserting the following separate and distinct affirmative defenses:

8 **AFFIRMATIVE DEFENSES**

9 As separate and distinct affirmative defenses to Plaintiffs' unverified Complaint,
10 Defendant alleges as follows:

11 **FIRST AFFIRMATIVE DEFENSE –**

12 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
13 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
14 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
15 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
16 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
17 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
18 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

19 Defendant alleges that neither the Complaint, nor any cause of action set forth
20 therein, states facts sufficient to constitute a cause of action against Defendant.

21 **SECOND AFFIRMATIVE DEFENSE –**

22 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
23 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
24 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
25 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
26 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
27 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
28 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs' causes of action are barred, in whole or in part, by all of the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not suffered, and will not suffer, irreparable harm as a result of any of the alleged conduct and/or omissions of Defendant.

FOURTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs' claims for injunctive relief are barred, in whole or in part, because Plaintiffs' legal remedies are adequate.

FIFTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety

Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs' claims are barred from any remedy, or certain remedies, under the doctrines of laches, waiver and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs' claims are barred from any remedy, or certain remedies, under the doctrine of unclean hands. See *Molski v. Mandarin Touch Restaurant*, 359 F. Supp. 2d 924 (C.D. Cal. 2005) (holding that plaintiff's counsel, the Frankovich Group, must seek leave of court before filing any claims under the Americans with Disabilities Act) *affirmed by Molski v. Evergreen Dynasty Corp.*, 2007 U.S. App. LEXIS 20966 (9th Cir. 2007); *Molski v. Mandarin Touch Restaurant*, 347 F. Supp. 2d 860 (C.D. Cal. 2004) (finding that a claim under the American with Disabilities Act against defendants constituted vexatious litigation).

SEVENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiff Disability Rights Enforcement, Education, Services: Helping You Help Others lacks standing to sue.

EIGHTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs have failed to mitigate their damages.

NINTH AFFIRMATIVE DEFENSE

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Civil Code §§ 51, 52, 54, 54.1 and 54.3 and Health and Safety Code §§ 19955 et seq. do not create a private cause of action for damages for alleged discrimination. Civil Code § 55 provides only a private cause of action to enjoin such alleged statutory violations.

TENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,

1 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 2 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

3 Assuming, arguendo, that Plaintiffs were denied access to a place of public
 4 accommodation, Defendant alleges that such exclusion was not unlawful because access could not
 5 be provided to Plaintiffs without causing undue hardship to Defendant.

6 **ELEVENTH AFFIRMATIVE DEFENSE –**

7 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 8 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 9 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 10 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 11 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 12 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 13 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

14 Assuming, arguendo, that Plaintiffs were denied access to the subject facility,
 15 Defendant alleges that such exclusion was not unlawful because access could not be provided to
 16 Plaintiffs without fundamentally altering the nature and/or character of the business establishment
 17 and the goods and services provided therein.

18 **TWELFTH AFFIRMATIVE DEFENSE –**

19 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 20 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 21 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 22 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 23 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 24 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 25 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

26 Assuming, arguendo, that Plaintiffs were denied access to the subject facility,
 27 Defendant alleges that such exclusion was not unlawful because barrier removal was not readily
 28 achievable.

THIRTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Assuming, arguendo, that Plaintiffs were denied access to the subject facility, Defendant alleges that such exclusion was not unlawful because the facility operated by Defendant was not a newly constructed facility nor did it have any alterations, requiring compliance with Title III of the American's with Disabilities Act, or Title 24 of the California Code of Regulations, during the relevant time frame.

FOURTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Assuming, arguendo, that Plaintiffs were denied access to the subject facility for the reasons set forth in paragraph 14 and 15 of the Complaint, Defendant alleges that she has no liability for any such allegedly unlawful conditions because Defendant does not and has not exerted custody and/or control over the sidewalk. Therefore, Defendant is improperly joined.

FIFTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION

FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Assuming, arguendo, that the facilities at issue were designed, developed, constructed, modified and/or altered in violation of federal and/or California law, Defendant alleges that all legal requirements for access by disabled persons have been met through the obtaining of necessary permits from appropriate legal authorities for the construction, alteration or modification of the premises, and that Defendant reasonably relied on the actions of such legal authorities.

SIXTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Assuming, arguendo, that the facilities at issue were designed, developed, constructed, modified and/or altered in violation of federal and/or California law, Defendant alleges that she had no such knowledge.

SEVENTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act

BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that she did not deny Plaintiffs full and equal access to goods, services, facilities, privileges, advantages or accommodations within a public accommodation owned, leased and/or operated by Defendant as required by federal law, including, but not limited to the ADA and/or California law, including, but not limited to, Civil Code §§ 51, 52, 54, 54.1, 54.3, and 55.

EIGHTEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that she provided Plaintiffs with alternative methods for access to the facility.

NINETEENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs have failed to exhaust the administrative remedies available to them.

TWENTIETH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public

1 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 2 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 3 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 4 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 5 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 6 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

7 Defendant alleges that Plaintiffs failed to notify Defendant of their need, if any, for
 8 equivalent service and access or accommodation, and failed to allow Defendant the opportunity to
 9 provide such.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE –**

11 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 12 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 13 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 14 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 15 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 16 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 17 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

18 Defendant alleges that the acts or omissions alleged were the proximate result of the
 19 conduct of third persons such that Defendant cannot be held liable for such acts or omissions, and
 20 that said third persons owe a duty to Defendant to indemnify it for any damages, attorney's fees
 21 and/or costs incurred as a result of their litigation.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE –**

23 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 24 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 25 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 26 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 27 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 28 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act

1 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

2 Defendant alleges that the alleged acts or omissions to which Plaintiffs refer which
3 form the basis of Plaintiffs' Complaint were done, if at all, in good faith, honestly and without
4 malice and Defendant has not violated any rights Plaintiffs may have under federal, state or local
5 laws, regulations or guidelines.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE –**

7 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
8 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
9 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
10 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
11 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
12 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
13 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

14 Defendant alleges that the cost of some or all of the modifications to the subject
15 properties that Plaintiffs seeks to have imposed upon Defendant are disproportionate in terms of the
16 cost and scope to that of any alterations made within the statutory period, if any.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE –**

18 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
19 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
20 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
21 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
22 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
23 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
24 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

25 Defendant alleges that she granted Plaintiffs access to the subject facilities, and if
26 Plaintiffs were in fact excluded from the subject facility, any such exclusion was for reasons
27 rationally related to the services performed and the facilities provided by Defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that she has fulfilled any obligation that she may have had to reasonably accommodate Plaintiffs' alleged disabilities.

TWENTY-SIXTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT AND NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that any and all actions taken by Defendant, or anyone acting on her behalf, if any, with respect to Plaintiffs or the conditions of the establishment in question, were for lawful and legitimate, non-discriminatory reasons.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act

1 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

2 Defendant alleges that the Complaint and each and every cause of action alleged
3 therein is barred in that at all times relevant hereto, Defendant acted reasonably, in good faith and
4 without malice, based upon the relevant facts and circumstances known to her at the time she acted,
5 if at all.

6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE –**

7 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
8 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
9 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
10 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
11 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
12 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
13 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

14 Defendant alleges that Defendant's services and/or facilities provided to the public
15 are readily accessible to and usable by persons with disabilities as required by California and Federal
16 laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.,
17 the California Disabled Persons Act, California Civil Code §§ 54 et seq., the California Unruh Civil
18 Rights Act, California Civil Code §§ 51 et seq., and the California Health and Safety Code Part 5.5.

19 **TWENTY-NINTH AFFIRMATIVE DEFENSE –**

20 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
21 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
22 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
23 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
24 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
25 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
26 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

27 Defendant alleges that Plaintiffs were not true customers of the business, and that
28 Plaintiffs were merely testers engaged in visiting the subject facilities in order to ascertain whether

1 there were any purported ADA and/or related violations.

2 **THIRTIETH AFFIRMATIVE DEFENSE –**

3 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
4 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
5 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
6 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
7 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
8 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
9 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

10 Assuming, arguendo, that Plaintiffs were denied access to the subject facility,
11 Defendant alleges that it would be structurally impracticable to design and construct the facility to
12 make it reasonably accessible to people with disabilities.

13 **THIRTY-FIRST AFFIRMATIVE DEFENSE –**

14 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
15 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
16 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
17 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
18 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
19 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
20 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

21 Assuming, arguendo, that Plaintiffs were denied access to the subject facility,
22 Defendant alleges that such exclusion was not unlawful because the facility in which Defendant
23 operates her business was not a newly constructed facility, nor did it have any alterations requiring
24 compliance with any applicable law during the relevant timeframe.

25 **THIRTY-SECOND AFFIRMATIVE DEFENSE –**

26 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
27 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
28 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF

1 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 2 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 3 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 4 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

5 Defendant alleges that Plaintiffs did not exercise due caution or care with respect to
 6 matters alleged in the Complaint and if, in fact, Plaintiffs suffered any damage or injury, Plaintiffs
 7 contributed in whole or in part to such damage or injury, and, therefore, any remedy or recovery to
 8 which Plaintiffs might otherwise be entitled must be denied or reduced accordingly.

9 **THIRTY-THIRD AFFIRMATIVE DEFENSE –**

10 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 11 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 12 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 13 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 14 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 15 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 16 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

17 Defendant alleges that Plaintiffs had equal access to the facilities at issue as non-
 18 disabled individuals.

19 **THIRTY-FOURTH AFFIRMATIVE DEFENSE –**

20 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
 21 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
 22 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
 23 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
 24 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
 25 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
 26 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

27 Defendant alleges that Plaintiffs are not legally entitled to recover any attorneys' fees
 28 with regard to this matter.

THIRTY-FIFTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs have failed to state facts sufficient to set forth claim(s) for punitive, treble and/or exemplary damages.

THIRTY-SIXTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs have failed to allege special damages with the requisite degree of specificity.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant allege that California Civil Code §§ 54.3 and 55, providing for public prosecution and private injunctive relief for violations of Civil Code § 54.1, are to be exclusive and damages provided for by Civil Code § 52 are not recoverable for such violations.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that she owed no duty of care toward Plaintiffs.

THIRTY-NINTH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations, advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

Defendant alleges that Plaintiffs alleged injuries and alleged damages, if any, were proximately caused and contributed to by the negligence of Plaintiffs.

FORTIETH AFFIRMATIVE DEFENSE –

(AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,

1 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
2 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

3 Defendant alleges that Plaintiffs did not make any attempt to enter the subject facility.

4 **FORTY-FIRST AFFIRMATIVE DEFENSE –**

5 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
6 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
7 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
8 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
9 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
10 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
11 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

12 Defendant alleges that she did not deny Plaintiffs full and equal access to goods,
13 services, facilities, privileges, advantages or accommodations within a public accommodation
14 owned, leased and/or operated by Defendant as required by federal law, including, but not limited to
15 the ADA and/or California law, including, but not limited to, Civil Code §§ 51, 52, 54, 54.1, 54.3,
16 and 55 because the bathrooms located inside the subject facilities are not open to the public for use.

17 **FORTY-SECOND AFFIRMATIVE DEFENSE –**

18 (AGAINST PLAINTIFFS' FIRST CAUSE OF ACTION FOR denial of access by a public
19 accommodation in violation of the Americans with Disabilities Act, SECOND CAUSE OF ACTION
20 FOR denial of full and equal access in violation of the California Civil Code, THIRD CAUSE OF
21 ACTION FOR denial of accessible sanitary facilities in violation of the California Health & Safety
22 Code and FOURTH CAUSE OF ACTION FOR denial of access to full and equal accommodations,
23 advantages, facilities, privileges and/or services in violation of the California Unruh Civil Rights Act
24 BY DEFENDANT NICOLE NITTOLO AGAINST ALL PLAINTIFFS)

25 Defendant reserves the right to amend her answer should she later discover facts
26 demonstrating the existence of new and/or additional affirmative defenses, and/or should a change in
27 the law support the inclusion of new and/or additional defenses.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. Plaintiffs take nothing by way of their Complaint and each claim for relief therein;
2. The Complaint and each claim for relief therein be dismissed in entirety with prejudice;
3. Judgment be entered in favor of Defendant and against Plaintiffs;
4. Defendant recovers her costs and reasonable attorneys' fees incurred herein;
5. Defendant be awarded her costs of suit herein; and
6. This Court grant Defendant such additional relief as is deemed to be just and proper.

Dated: September 19, 2007

Tyler M. Paetkau

TYLER M. PAETKAU
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
TERESA MARIE NITTOLO doing business
as MOLTE COSE

Firmwide:83121088.1 999999.2393

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On September 19, 2007, I served the within document(s):

• **DEFENDANTS' ANSWER TO PLAINTIFFS' UNVERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

<input type="checkbox"/>	By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses indicated below and <i>(specify one)</i> :
<input type="checkbox"/>	deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
<input type="checkbox"/>	placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
<input type="checkbox"/>	By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input checked="" type="checkbox"/>	By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service (First Legal Services T(415) 626-3111).
<input type="checkbox"/>	By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
<input type="checkbox"/>	By e-mail or electronic transmission. <u>AS A COURTESY</u> , I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Counsel for Plaintiff, Nichole Moss, et al.

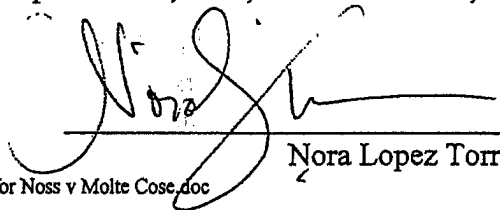
Thomas E. Frankovich, Esq.
Thomas E. Frankovich, APLC
 2806 Van Ness Avenue
 San Francisco, CA 94109
 Fax: (415) 674-9900
 E-mail:

Defendants,

Raymond G. Choy
 2048 Polk Street, # 5
 San Francisco, CA 94109

Lorraine J. Choy
 2048 Polk Street, # 5
 San Francisco, CA 94109

1
2 I declare under penalty of perjury under the laws of the State of California that the
3 above is true and correct. Executed on September 19, 2007, at San Francisco, California.
4

5
6 
7

Nora Lopez Torres

C:\Documents and Settings\ntorres\Desktop\091907 POS for Noss v Molte Cose.doc

EXHIBIT C

1 TYLER M. PAETKAU, Bar No. 146305
LITTLER MENDELSON
2 A Professional Corporation
650 California Street
3 20th Floor
San Francisco, CA 94108.2693
4 Telephone: 415.433.1940

5 Attorneys for Defendants
RAYMOND G. CHOY, LORRAINE J. CHOY
6 AND TERESA MARIE NITTOLO doing business
as MOLTE COSE
7

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

SEP 19 2007

GORDON PARK-LI, CLERK

BY: _____
Deputy Clerk
ROSSALY E. DE LA VEGA NAVARRO

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 NICOLE MOSS, an individual; and
DISABILITY RIGHTS ENFORCEMENT,
11 EDUCATION, SERVICES: HELPING
YOU HELP OTHERS, a California public
12 benefit corporation,

13 Plaintiffs,

14 v.

15 MOLTE COSE, RAYMOND G. CHOY
and LORRAINE J. CHOY, TERESA
16 MARIE NITTOLO, an individual dba
MOLTE COSE, and DOES 1-20, inclusive,

17 Defendants.
18
19

Case No. CGC-07-464669

**NOTICE TO PLAINTIFFS, PLAINTIFFS'
COUNSEL AND STATE COURT OF
REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. §§ 1331, 1441(b)
AND 1446 (FEDERAL QUESTION)**

Dept: 212
Judge: Hon. Arlene T. Borick
Complaint Filed: June 27, 2007
Trial Date: None


20
21 TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN
22 FRANCISCO, PLAINTIFFS NICOLE MOSS AND DISABILITY RIGHTS ENFORCEMENT,
23 EDUCATION, SERVICES: HELPING YOU HELP OTHERS and PLAINTIFFS' ATTORNEY OF
24 RECORD:

25 PLEASE TAKE NOTICE that Defendants Molte Cose, Raymond G. Choy, Lorraine
26 J. Choy and Teresa Marie Nittolo have on September 19, 2007, filed a Notice of Removal in the
27 office of the Clerk of the United States District Court in and for the Northern District of California
28 pursuant to 28 U.S.C. §§ 1331, 1367, 1441(b) and 1446. A true and correct copy of said Notice of

1 Removal and accompanying exhibits are attached hereto and incorporated herein by reference as
2 Exhibit A.

3 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of
4 said Notice of Removal of Civil Action with the United States District Court, together with the filing
5 of said Notice of Removal of Civil Action with this Court, effects the removal of this action and this
6 Court may proceed no further unless and until the case is remanded.

7 Dated: September 19, 2007

8
9 
10 TYLER M. PAETKAU
11 LITTLER MENDELSON
12 A Professional Corporation
13 Attorneys for Defendants
14 RAYMOND G. CHOY, LORRAINE J. CHOY
15 AND TERESA MARIE NITTOLO doing
16 business as MOLTE COSE

17 C:\Documents and Settings\abarbeau\Desktop\Notice for State Court in Moss v. Molte Cose.doc

ATTACHMENT 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NICOLE MOSS

Plaintiff (s)

v.

MOLTE COSE

Defendant(s).

C 07-04813 EDL

SCHEDULING ORDER FOR CASES
 ASSERTING DENIAL OF RIGHT OF
 ACCESS UNDER AMERICANS WITH
 DISABILITIES ACT TITLE III (42 U.S.C. §§
 12181- 89)

IT IS HEREBY ORDERED that this action is assigned to the Honorable Elizabeth D. Laporte. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this Order and the assigned judge's pertinent Standing Orders. This case is otherwise exempt from Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

CASE SCHEDULE

Date	Event	Rule(s)
9/19/2007	Notice of removal filed	
11/19/2007	Last day for plaintiff to complete service on defendants or file motion for administrative relief from deadline	<u>General Order 56; Civil Local Rule 7-11</u>
7 days before Joint Site Inspection	Last day for parties to complete initial disclosures, including defendant's disclosure re: construction or alteration history of subject premises	<u>FRCivP 26(a); General Order 56 ¶2;</u>
12/28/2007	Last day for parties and counsel to hold joint inspection of premises, with or without meet-and-confer regarding settlement	<u>General Order 56 ¶3,4;</u>
10 business days after Joint Site Inspection	Last day for parties to meet and confer in person to discuss settlement	<u>General Order 56 ¶4;</u>
45 days after Joint Site Inspection	Last day for plaintiff to file "Notice of Need for Mediation"	<u>General Order 56 ¶6;</u>
7 calendar days after mediation	Last day for plaintiff to file Motion for Administrative Relief Requesting Case Management Conference	<u>General Order 56 ¶7; Civil Local Rule 7-11</u>

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

NICOLE MOSS, an individual; and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION, SERVICES; et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Francisco
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

THOMAS E. FRANKOVICH, Attorney for Plaintiffs
THOMAS E. FRANKOVICH, APLC
2806 Van Ness Avenue
San Francisco, CA 94109
Telephone (415) 674-8600 Facsimile: (415) 674-9900

ATTORNEYS (IF KNOWN)

TYLER M. PAETKAU, Attorney for Defendants, Teresa Marie
Nittolo, Raymond G. Choy and Lorraine J. Choy
LITTLER MENDELSON, PC
650 California Street, 20th Floor
San Francisco, CA 94108.2693 T.415.433.1940

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1. U.S. Government Plaintiff
☐ 2. U.S. Government Defendant
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

PLACE AN "X" IN ONE BOX FOR PLAINTIFF
AND ONE BOX FOR DEFENDANT

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input checked="" type="checkbox"/> 446 Amer w/ disab - Other	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Denial of Access by a Public Accommodation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., Cal. Civ. Code §§ 54, 54.1 and 54.3, Cal. Health & Safety Code § 199.55 et seq. and Cal. Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ CHECK YES only if demanded in complaint:
UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
IF ANY "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

September 19, 2007

SIGNATURE OF ATTORNEY OF RECORD

Tyler M. Paetkau
TYLER M. PAETKAU, Attorney for DEFENDANTS